

Title 19 Chapter 7

Environmental Self-Evaluation Act

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19-7-101. Title.

This chapter is known as the "Environmental Self-Evaluation Act."

19-7-102. Purposes.

The purpose of this chapter is to:

- (1) enhance the environment through voluntary compliance with environmental laws; and
- (2) provide incentives to voluntarily identify and remedy environmental compliance problems.

19-7-103. Definitions.

As used in this chapter:

(1) "Administrative proceeding" means an adjudicatory proceeding conducted by the department or other government entity with authority to enforce any environmental law, including any notice of violation proceeding, any department proceeding listed in Section 19-1-305, or any proceeding conducted pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(2) "Environmental audit report" means any document, information, report, finding, communication, note, drawing, graph, chart, photograph, survey, suggestion, or opinion, whether in preliminary, draft, or final form, prepared as the result of or in response to an environmental self-evaluation.

(3) "Environmental law" means any requirement contained in this title, or in rules made under this title, or in any rules, orders, permits, licenses, or closure plans issued or approved by the department, or in any other provision or ordinance addressing protection of the environment.

(4) "Environmental self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by an environmental law, that is performed to determine whether a person is in compliance with environmental laws. A person may perform an environmental self-evaluation through the use of employees or the use of outside consultants.

19-7-104. Unlawful disclosure -- Environmental audit report.

(1) Information that is divulged, disseminated, or otherwise disclosed in violation of Utah Rules of Evidence, Rule 508, may not be admitted as evidence in an administrative or judicial proceeding.

(2) If any person, including a department employee or a presiding hearing officer, divulges or disseminates any part of the information contained in an environmental audit report and that report is privileged under Utah Rules of Evidence, Rule 508, the privilege is not waived except as provided under Utah Rules of Evidence, Rule 508(d)(1).

(3) An environmental audit report obtained pursuant to an in camera review is a protected record for purposes of Title 63, Chapter 2, Government Records Access and Management Act, and a department employee or attorney representing the department may not disclose the report except in accordance with the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

19-7-105. Privilege in administrative proceeding.

An environmental audit report is privileged in accordance with and to the extent provided by Utah Rules of Evidence, Rule 508, Environmental Self-Evaluation Privilege, in any administrative proceeding.

19-7-106. In camera review -- Burden of proof.

(1) The person seeking disclosure of an environmental audit report shall request an in camera review of the audit report by a court of record.

(2) (a) If a court of record determines through in camera review that all or part of an environmental audit report is not privileged, the court shall order the disclosure of the nonprivileged portions of the environmental audit report.

(b) The privileged portions of the environmental audit report may not be disclosed.

(3) The person asserting the environmental self-evaluation privilege has the burden of establishing a prima facie case of privilege.

(4) The person seeking disclosure of an environmental audit report has the burden of proving that the environmental audit report is not privileged or excepted pursuant to the Utah Rules of Evidence, Rule 508.

19-7-107. Privileged communications.

(1) A person or an officer or employee of that person who performs an environmental self-evaluation, as defined by Section 19-7-103, or assists in the preparation of an environmental audit report, as defined by Section

19-7-103, or a consultant hired for the purpose of performing an environmental self-evaluation or audit report cannot be examined without the consent of the person for which the environmental self-evaluation is conducted unless ordered to testify by a court.

(2) Subsection (1) does not apply if the environmental self-evaluation or audit report is subject to discovery or is admissible under Utah Rules of Evidence, Rule 508.

19-7-108. Scope of chapter.

This chapter shall apply to all administrative and judicial proceedings commenced on or after March 21, 1995.

19-7-109. Incentives for voluntary disclosure and compliance -- Waiver of civil penalties.

(1) As used in this section, "regulated entity" means any person, business, or other entity subject to regulation under Title 19, Environmental Quality Code.

(2) The department shall waive civil penalties for an instance of noncompliance with an environmental law or requirement:

(a) that a regulated entity discovered through an environmental self-evaluation;

(b) that a regulated entity voluntarily disclosed to the department in writing within 21 days after the entity's discovery of the violation;

(c) that a regulated entity remedied or corrected within 60 days after discovery of the violation, or within a reasonable amount of time if the violation cannot be remedied within 60 days; and

(d) regarding which the regulated entity submitted to the department a written outline of reasonable steps the regulated entity will take to prevent a recurrence.

(3) The department may not waive penalties under Subsection (2) if:

(a) the instance of noncompliance resulted from a lack of due diligence in complying with environmental laws, taking into account the size and nature of the regulated entity;

(b) the instance of noncompliance is a recurrence of a similarly caused specific violation or a violation of the specific terms of a judicial or administrative consent order or agreement;

(c) the instance of noncompliance resulted from reckless or willful disregard of environmental laws;

(d) the regulated entity conducted the environmental self-evaluation for a fraudulent purpose;

(e) the department had already initiated a compliance investigation at the time of the disclosure and the regulated entity had been advised of or was aware of the investigation;

(f) the instance of noncompliance was discovered pursuant to a legally mandated monitoring, testing, or sampling requirement prescribed by law, rule, permit, order, or consent agreement; or

(g) the instance of noncompliance resulted in serious actual harm or imminent and substantial endangerment to human health or the environment.

(4) (a) To the extent the instance of noncompliance resulted in an economic benefit or competitive advantage over other similar regulated entities that did achieve compliance, the department may seek a civil penalty to recover the monetary amount of the economic benefit or competitive advantage resulting from the incidence of noncompliance.

(b) Action under this Subsection (4) is not prohibited by Subsection (2).

(5) This section does not limit the department's discretion in reducing penalties for noncompliance with an environmental law which may not fully qualify for waiver under this section, but which the department determines should be appropriately reduced.